United States Court of Appeals

for the Second Circuit

APPELLEE'S BRIEF

76-6031

To be argued by
RALPH McMURRY

B
P/S

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

----------X

WALTER WOE, et al., :

Plaintiffs-Appellants, :

-against- :

DAVID MATHEWS, et al., :

Defendants-Appellees. :

----------X

BRIEF FOR STATE DEFENDANTS-APPELLEES

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Preliminary Statement

This is a purported appeal from a decision of the Hon. Edward R. Neaher dated January 14, 1976, granting in part and denying in part state and federal defendants' motions to dismiss.

Questions Presented

1. Whether this Court has jurisdiction of portions of this appeal, since the orders appealed from are not final decisions within the meaning of 28 U.S.C. § 1291 and are not otherwise appealable?

2. Whether the District Court properly dismissed plaintiff's constitutional claims against the New York Mental Hygiene Law?

Facts

Plaintiff Walter Woe, a former involuntarily committed patient at Brooklyn State, instituted this action in August, 1975, seeking declaratory, injunctive, and monetary relief. Plaintiff asserted five causes of action, all of which allegedly revolved around the existence of a "two-tier" system of mental hospital care in the United States. Plaintiff alleged that portions of the federal Medicaid Law and the New York State Mental Hygiene Law were unconstitutional. Plaintiff later amended his complaint to include a cause of action for a "right to treatment" from the State. Plaintiff also sought class certification.

Plaintiff named six defendants, three of them being New York officials and a fourth being the State of New York. The remaining two defendants were the United States and the Secretary of Health, Education, and Welfare.

Opinion Below

Both the state and federal defendants moved to dismiss the complaint. In an opinion dated January 14, 1976, reported at 408 F. Supp. 419, the

District Court for the Eastern District of New York, the Hon. Edward R. Neaher, granted the motions in part and denied the motions in part. In particular, the claims against the federal defendants were dismissed and the claims against the state defendants were dismissed as insubstantial insofar as those claims challenged the constitutionality of the Mental Hygiene Law. However, as to what the District Court viewed as the "heart" of plaintiffs' case, the State's motion to dismiss was denied as against the cause of action alleging a "right to treatment" that would allegedly correct the evils of the alleged two-tier system of mental health care.

In its opinion, the District Court also granted plaintiff class certification, and denied various motions of plaintiff to further amend the complaint and add parties.

POINT I

THE COURT HAS NO JURISDICTION OVER PORTIONS OF THE APPEAL, SINCE THE ORDERS APPEALED FROM ARE NOT FINAL DECISIONS WITHIN THE MEANING OF 28 U.S.C. § 1291 AND ARE NOT OTHERWISE APPEALABLE.

Plaintiff herein seeks to appeal (1) the dismissal of his complaint against the federal defendants; (2) the District Court's denial of leave to amend the amended complaint and add parties; (3) the District Court's class certification (as too narrow in scope); and (4) the dismissal by the District Court of plaintiff's constitutional attack on New York's Mental Hygiene Law. The state defendants are concerned only with the latter three purported appeals.

As to claims (2) and (3), it is respectfully submitted that this Court has no jurisdiction to entertain such an appeal.

28 U.S.C. § 1291 states that the courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts. A final decision for purposes of appeal is one which terminates the litigation between the parties on the merits of the case, leaving nothing to be done except enforce by execution what has been determined. United States v.

Garber, 413 F. 2d 284 (2d Cir., 1969). "Finality" is to be given a practical, not a technical construction. Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 171 (1974). In this case, no final decision within the meaning of 28 U.S.C. § 1291 was made with respect to the orders regarding the class certification and leave to amend the complaint and add parties. Indeed, the District Court denied a motion to dismiss made by the state defendants as against plaintiff's principal substantive claim of a "right to treatment." Thus the decision below is anything but a final decision terminating the litigation. On the contrary, the main issue remains to be litigated. A practical application of § 1291 compels the conclusion that the decision below is not appealable.

This case is a classic example of the wisdom of limiting appealable orders to those decisions which are "final." Entertaining any appeal in this case will constitute piecemeal appellate disposition - the very evil Congress sought to avoid - since plaintiff's primary claim against the state defendants is still very much alive in the District Court and since the orders appealed from concern ancillary matters. See Eisen v. Carlisle & Jacquelin, supra (1974). There are no unusual circumstances here that would make an exception in

plaintiff's case. See United States v. Nixon, 418 U.S. 683 (1974).

These orders from which plaintiff attempts to appeal are not otherwise appealable, since no certification has been obtained pursuant to 28 U.S.C. § 1292(b).

POINT II

THE DISTRICT COURT PROPERLY DISMISSED THE CONSTITUTIONAL CLAIMS AGAINST NEW YORK'S MENTAL HYGIENE STATUTE.

Assuming arguendo plaintiff's constitutional attack on the New York Mental Hygiene Law is properly before the Court,* the arguments advanced by plaintiff

* Rule 54b, FRCP, does not apply to orders not final under § 1291 but nonetheless appealable under some other statute. Construing the dismissal of the constitutional claims against the Mental Hygiene Law as a refusal to issue an injunction against the enforcement of the Mental Hygiene Law, it would appear that conceivably this particular claim is appealable pursuant to 28 U.S.C. § 1292(a)(1). See Wright and Miller, Federal Practice and Procedure, Vol. 10, § 2658, 1973 ed. The District Court viewed the complaint as seeking injunctive relief as to this claim. However, if plaintiff's view is correct - that he was seeking declaratory relief as against the Mental Hygiene Law - it would appear that his failure to obtain partial judgment pursuant to Rule 54b would deprive this Court of jurisdiction of the appeal. The same result follows if the District Court's action is viewed as a simple dismissal of this portion of the complaint.

(pp. 52-55) are without merit. Plaintiff appears to claim that the statutes provides no separation of functions, and that "the plaintiff, the defendant, and the hearing officer are all one." (Br. 54).

Plaintiff gives no clue as to what "functions" must be constitutionally separated for which purposes. Whatever theory plaintiff may be pursuing, however, is completely erroneous.

Sections 13.17, 13.19, and 13.21 provide for hearings for alleged violations of portions of the Mental Hygiene Law. Notice to the accused violator and an opportunity to respond is required. The Attorney General of New York is empowered to take legal action against alleged violators.

It is impossible to see how this procedure violates the Constitution. The fundamental prerequisites of fairness - notice and an opportunity to respond - are present. The provision obviously provides for proceedings between antagonists subject to impartial adjudication by a court. This procedure is similar to that used in countless administrative agencies around the nation.

Further, the New York Mental Hygiene Law

affords rights to the mentally ill and a remedy to enforce those rights, as the District Court noted. Mental Hygiene Law, §§ 15.01, 15.03, and 15.15.

Although the statute on its face discriminates against no one, plaintiff also seems to make his attack on the Mental Hygiene statute in the context of his attack on the alleged two-tier system of mental care. However, as to that attack and its "right to treatment" premise, the District Court denied the State's motion to dismiss. This claim still stands and awaits litigation in the District Court. Plaintiff has done nothing to prosecute that claim in nearly a year.

CONCLUSION

PORTIONS OF THE APPEAL MUST BE DISMISSED FOR LACK OF JURISDICTION; IF AN APPEAL LIES FROM THE DISTRICT COURT'S DISMISSAL OF THE CONSTITUTIONAL CLAIMS AGAINST THE MENTAL HYGIENE LAW, ITS JUDGMENT MUST BE AFFIRMED.

Dated: New York, New York
November 10, 1976

Respectfully submitted,

LOUIS J. LEFKOWITZ
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Defendants-Appellees

SAMUEL A. HIRSHOWITZ
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STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

Ralph McMurry, being duly sworn, deposes and says that he is employed in the office of the Attorney General of the State of New York, attorney for herein. On the 10th day of November, 1976, he served the annexed upon the following named persons:

Morton Birnbaum
225 Tompkins Avenue
Brooklyn, N.Y.
11216

U.S. Attorney
~~225~~ Att: Cyril Hyman
U.S. Courthouse
225 Cadman Plaza East
Brooklyn, N.Y.

Attorney in the within entitled by depositing a true and correct copy thereof, properly enclosed in a post-paid wrapper, in a post-office box regularly maintained by the Government of the United States at Two World Trade Center, New York, New York 10047, directed to said Attorney at the address within the State designated by them for that purpose.

Ralph McMurry

Sworn to before me this
10th day of November, 197

David Paul

Assistant Attorney General
of the State of New York